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Written statement* submitted by the Centre Europe - tiers monde, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.

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Mapuche People's Rights in Chile: The Issue of Ancestral Lands and the Criminalization of Mapuche Leaders and Communities[1]

1. The Europe–Third World Center (CETIM) expresses through this declaration its concern over the criminalization of Mapuche people and leaders who are fighting for their rights and facing a policy of persecution and other forms of violence.

2. Below, in response to the call of the Special Rapporteur on Indigenous Peoples' Rights, we present some of the principal facts related to the conflict between the Mapuche and the Chilean state, some historical, some contemporary.[2]

Introduction

3. The current criminalization processes imposed on Mapuche communities, leaders and representatives have deep economic roots.

4. A boom in hydroelectric projects and forestry development is currently under way in the Bío Bío, Araucanía, Los Ríos and Los Lagos regions. These projects have extended and intensified the land grab of the ancestral Mapuche territory (*Wallmapu*[3]) and generated violations of human rights against leaders and communities.

5. The indigenous populations in Chile suffer from significant poverty rates relative to the rest of the population[4] – a situation that, added to conditions of marginalization and exclusion, has led to an intense series of protests and mobilizations. The Arauco Malleco Coordination (*Coordinadora Arauca* Malleco) is one of its expressions.

6. The aim of these actions is the restitution of ancestral territories, the recognition of the right of peoples to freely dispose of their own wealth and natural resources (recognized by section 1.2 of the international human rights conventions) and the recognition of the right of peoples to be different in achieving their development according to their own necessities and interests.

Politics and ancestral territorial demands

7. The territorial rights of Mapuche people recognized by international law (OIT, C169 art. 14 al. 1) are not fully enforced by the Chilean state. The policies on indigenous lands based on Indigenous Law 19.253 (*Ley indígena*) transferred to the Mapuche people some 465,231 hectares between 1994 and 2014 (5% of the ancestral lands, according to Mapuche representatives), which does not satisfy the demands of the Mapuche regarding these lands.

8. Leading up to this situation, according to the community leaders, is a long history of subjugation and dispossession resulting in the loss of territory since 1893 and the defeat of Mapuche people against the colonial Chilean army. The land in the Araucania region recognized by the Chilean state as belonging to the Mapuche people in the period 1884-1929 represented approximately 500,000 hectares. During the Agrarian Reform in 1960 in the provinces of Malleco and Cautín, more land was returned to the Mapuche people. However, Augusto Pinochet's dictatorship stopped and reversed this recovery process, with the result that most of recovered land was returned to its former owners during the Counter-Agrarian Reform.

9. Today, the major part of Mapuche territory is part of an extractive forestry system, endorsed and subsidized by the Chilean state, and which violates the Mapuche people's rights in three significant ways:

- perpetuation of structural inequalities;
- contempt for and suppression of civil and political rights;

[1] This statement was drafted with the collaboration of the "Commission éthique contre la torture" and the "Colectivo Nuevas Generaciones Chile".
2https://www.ohchr.org/Documents/Issues/IPeoples/SR/HRDefenders/ConceptNote_SP.docx
3Ancestral Mapuche territory. Its recovery is the foundation of the reconstitution of the Mapuche people.
4There is a 4% rate of extreme poverty among indigenous peoples, compared to 2.1% in the rest of the Chilean population (Casen 2017 Survey).

- various forms of oppression on a national-ethnic basis.

10. The exacerbation of the conflict is linked to the investments made by the transnational economic sector in the disputed territories. It affects indirectly 3000 communities, and directly 1000 others.[5]

11. The result of the constant rejection by the forestry companies and the Chilean state of the Mapuche people's legitimate demands is depredation of territorial spaces that provide the habitat necessary for the reproduction of Mapuche culture; the indiscriminate exploitation of land and water resources; and a criminalization policy involving deliberate frame-ups against organizations and leaders aimed at dismantling the Mapuche movement.

12. In such a context, it is difficult to imagine finding a solution to Mapuche demands without addressing the issue of the restitution of ancestral lands. These demands have to face, on the one hand, the investment policy in the Araucania region and other regions in southern Chile; and, on the other hand, the limitations of state institutions and laws on land restitution.

Criminalization Policy

13. The Chilean state has reacted to the fight of the Mapuche people with a criminalization strategy. The Arauco Malleco Coordination (CAM), an autonomous organization that fights for the recognition of the legitimate rights of Mapuche people through territorial restitution and identity reconstitution, has been persecuted for two decades by the forestry industry and criminalized by the Chilean state.

14. Under this criminalization strategy, security institutions of the Chilean state are recurring to some of the practices used during the military dictatorship, such as the interior state security doctrine. Hence, the Mapuche people have become a domestic enemy against which low intensity security strategies are applied.

15. This is reinforced by the use of the Anti-terrorism Law, which allows the incarceration of Mapuche leaders[6] and which has been contested by United Nations bodies[7] as well as by national and international human rights organizations. In the same way, the Chilean state, under the Intelligence Law, has carried out intelligence operations through the National Intelligence Agency (ANI) with the collaboration of state agents. Both Operation *Paciencia* (2002 and 2004) and Operation *Huracan* (2017) are irrefutable examples of civil rights violations.

16. On 23 September 2017, legal and police proceedings were initiated against 8 Mapuche leaders, under both the Intelligence Law and the Anti-terrorism Law. This was intended to create falsified evidence,[8] which was later revealed by inspections by the prosecution team and external bodies. At present, the Public Ministry, which is the Chilean judicial prosecution authority, has announced that it is ending Operation *Huracan* without bringing any charges; in parallel, it is opening an investigation for evidence tampering by state officials, specifically officers of the intelligence unit.

17. This strategy of exacerbating the conflict appears to be a means to block the legitimate demands of the Mapuche people. This translates into an increase of the military presence in the regions in conflict, with the recent intervention of the *Jungla* Commando, made up of 80 unformed police trained in Colombia and the United States at a substantial cost of to the Chilean taxpayers,[9] intended to prevent the Mapuche communities' claims from going forward.

Conclusions and recommendations

5Interview with Hector Llaitul, Rapport Obs, DDHH, Commission éthique contre la torture, 16 March 2018.
6 Luchsinger Mackay case and Iglesias case, observed by Amnesty International, report from 9 August 2018.
7See, inter alia:
- the United Nations Human Rights Committee (CCPR/C/CHL/CO/6, §7);
- the United Nations Committee against Torture (CAT/C/CHL/CO/6,§ 19);
- the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism, who stressed in 2014 the need for the anti-terrorism law not to be applied to the Mapuche people in the context of social protests or for the territory (A/HRC/25/59/Add.2, § 85-97).
8The set-up consisted of inserting false messages into the mobile phones of the accused after their arrest.
9Advanced technology equipment: satellites, UAVs, sophisticated surveillance equipment with infra-red, armored, asymmetric non-conventional war weapons, 5.56 rifles, low intensity conflict weapons.

18. For 20 years, the Chilean state has carried on a systematic criminalization policy against Mapuche leaders, representatives and communities, using measures that favor transnational companies' private interests to the detriment of the general population and perpetuating the discrimination suffered by a large part of the indigenous populations that live in conditions of poverty and vulnerability.

19. The inability of the state to find a political solution through dialogue with forestry companies and the affected communities maintains a regime of oppression contrary to the spirit of international human rights norms.

20. We urge the Chilien state to:

- comply with its obligations regarding international law, particularly relating to the United Nation's Declaration on Indigenous Peoples, which is supported by the Chilean state;
- adopt concrete measures to achieve a full enjoyment of indigenous peoples' rights, without discrimination; protect the indigenous persons fighting for their rights and refrain from implementing regressive policies against a vulnerable population;
- consider the demand to constitutionally enshrine the recognition of "indigenous peoples' self-determination"[10] as a fundamental issue in order to repair the historic treatment they have suffered;
- promote development mechanisms that take into account indigenous peoples' own needs in recovering their ancestral lands and guarantee a peaceful standard of living and coexistence, according to international norms;
- put an end to the criminalization policies against the Mapuche people by repealing the Antiterrorism Law which, although amended numerous times during the democratic transition, still violates the right to due process of law; its unjustified use against Mapuche leaders highlighting the unwillingness to dialogue with the communities' autonomous representatives and to recognize the legitimacy of their demands;
- revise the announcement of the amendment of Indigenous Law 19.253 by Sebastián Piñera's government, which seeks to nullify the prohibition on the selling of indigenous lands and represents an undermining of this recognized right;
- reaffirm its international commitment to effectively implement both the ILO Convention 169 and in particular indigenous peoples' right to consultation; in fact, the lack of land restitution and territorial autonomy mechanisms are at the root of regressive policies that favor private commercial interests; this situation is aggravated by the *Plan Impulso Araucania*, which violates the right to free, prior and informed consent[11] and further aims at criminalizing Mapuche demonstrations through new police and judicial measures;
- take internal judicial measures to ensure that transnational corporations respect human rights. Moreover, given the lack of international norms and judicial mechanisms to regulate and hold those companies responsible, we urge the Chilean government to constructively participate in the United Nation Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights in order to draft a legally binding international instrument; this is necessary in order to put an end to impunity and to contribute to the victims' access to justice.

21. We are appealing to the United Nations and its humans rights protection mechanisms to provide assistance in working out peaceful solutions and to assure an international follow-up on development, dialogue and peace measures in the Bío Bío, Araucanía, Los Ríos y Los Lagos regions, fostering the opening of good faith negotiations that include all actors in conflict and all the sectors representing the Mapuche people, with no exception, in particular those suffering from the criminalization policy for defending their legitimate rights.

22. Finally, we urgently request the Special Rapporteur on Indigenous People's Rights to visit Chile and to draft a report and contribute to the setting up of an independent international observation mission in respect to Mapuche people's demands.

10The indigenous participatory constitutional process, in which 17,016 indigenous people participated, expressed the desire to enshrine recognition of self-determination in Chile's constitution.

11Cf. ILO Convention 169 (art.16.2) and United Nations Declaration on the Rights of Indigenous Peoples(art.10, 19 et 29.2).